

AGREEMENT

THIS AGREEMENT made and entered into this 25 day of August, 1934, by and between CLARENCE COOK and ETHEL M. COOK, his wife, in their own rights, JOSEPH N. COOK and JULIA A. COOK, his wife, in their own rights, and CLARENCE COOK, JOSEPH N. COOK, and LYDIA L. GIBBONS, as the duly appointed, qualified, and acting executors of the estate of David S. Cook, Sr., deceased, for and on behalf of said estate, all hereinafter designated First Parties, and J. R. WESTON and GRACE E. WESTON, his wife, ELLSWORTH JOHNSON and CORA F. JOHNSON, his wife, HAROLD JOHNSON and LOLA W. JOHNSON, his wife, and OLE MATTSON and HATTIE H. MATTSON, his wife, all hereinafter designated Second Parties, all residents of Rich County, State of Utah,

W I T N E S S E T H :

WHEREAS, all of the parties hereto are owners of lands in Rich County, Utah, contiguous or adjacent to Gebo and Tuft Creeks as said land appear to be owned by the respective parties hereto in the records in the office of the County Recorder of Rich County, Utah; and

WHEREAS, the parties hereto have appropriated and put to beneficial use and have rights in the waters of said Gebo and Tuft Creeks and desire at this time by means of this contract to define and forever fix their rights and relative rights in and to said waters;

NOW THEREFORE, for and in consideration of the sum of \$1.00 in hand paid by each of the parties to the other parties hereto, receipt of which is hereby acknowledged, and the agreements and settlement herein contained,

IT IS AGREED AS FOLLOWS, TO-WIT:

1. That the waters of Tuft Creek are now fully appropriated and put to full beneficial use as follows:

a. In the high water time during the spring run-off of water of each year by a portion thereof being run through a ditch constructed and now existing on the lands of Second Party, J. R. Weston, and generally known and designated as Tuft Creek ditch, and from said ditch used by all parties hereto for stock watering and irrigation purposes and the balance thereof as said waters flow

across the lands of First Parties in their natural channels are spread and flooded out upon the meadow and cultivated lands of First Parties and thence run as they naturally flow off of said lands on to and are spread upon the lower lands owned by Second Parties.

b. In the irrigation season of each year while said waters are distributed and used according to time allotments thereof, First Parties are the owners of 6 full days of 24 hours each out of each 14 days distribution of said water and Second Parties hereto are the owners and are entitled to the balance of said distribution in each of said 14 day periods.

2. That the waters of Gebo Creek are now fully appropriated — and put to full beneficial use as follows:

a. In the high water time during the spring run-off of water of each year as said waters cross the lands of First Parties, said waters are spread out and flooded upon the meadows and cultivated lands of First Parties, then run as they naturally flow off of said lands on to and are spread and flooded upon the lower lands owned by Second Parties.

b. In the irrigation season of each year while said waters are distributed and used according to time allotments thereof, First Parties are the owners of ²⁷9 days of ²¹⁶24 hours each out of each 14 days distribution of said waters, totaling ~~102~~ 216 hours out of each of said 14 days, and Second Parties are the owners of and entitled to all of — the balance of said distribution in each of said 14 day periods.

3. That part of the waters so used by First Parties during their said time allotments in the irrigation season of each year and during the high water time of each year are used by First Party, Joseph N. Cook by diverting a portion of said waters of Gebo and Tuft Creeks to his lands through said Tuft Creek ditch now existing upon the lands of Second Party, J. R. Weston, as aforesaid; that it is agreed between the said Joseph N. Cook and all other parties hereto that he may cease to so run his portion of said waters which are run through said Tuft Creek ditch and in lieu thereof he may, to conduct said waters to his lands, construct a ditch below said Tuft Creek ditch on the lands of J. R. Weston; that for and in consideration of the surrender of said right by said First Party,

Joseph N. Cook, the said J. R. Weston and Grace E. Weston, his wife, hereby grant and convey unto said Joseph N. Cook, his heirs, successors, administrators, and grantees, a right of way to construct and maintain upon and across the lands of said J. R. Weston a ditch commencing approximately 25 feet below said present ^{heading of} Tuft Creek ditch, ^{and continuing parallel} for the ^{sheet} purpose of diverting and conveying ~~to the lands of said Joseph N. Cook~~ ^{as the nature of the} the portion of waters which the said Joseph N. Cook has heretofore conveyed and has had a right to convey to his lands through said Tuft Creek ditch during the high water and irrigation seasons of each year as hereinabove set forth.

4. That the time of the commencement of distribution by time allotments of the waters of Gebo and Tuft Creeks varies from year to year; that it is hereby agreed that said time may be determined each year as of the day when the combined waters of Gebo and Tuft Creeks can be put into said Tuft Creek ditch as said Tuft Creek ditch is at present located and of its present size, ^{after having a modern cleaning} including the waters of said Joseph N. Cook.

5. That on or about ^{November} ~~December~~ 1st of each year all of the waters of Gebo Creek shall be permitted to flow in their natural channel and to continue so to flow therein until about April 1st of each year when the high water use thereof, as aforesaid, begins. That the parties of the Second Part are hereafter owners of and entitled to the waters of Tuft Creek during the winter months of each year for stock watering purposes on lands of Second Parties.

6. That this agreement as to the relative and existing rights of the parties hereto is based upon and limited to the present areas of lands owned by the parties hereto, the present uses to which said waters are put, and the present location of ditches and their present sizes as they are used to divert the waters from Gebo and Tuft Creeks by the parties hereto; and there shall be no enlargement of the said rights, uses, and ditches without the mutual consent of the parties hereto except as to the ditch to be hereafter constructed by said Joseph N. Cook on the lands of J. R. Weston, as aforesaid.

7. That the waters of Gebo and Tuft Creeks are now fully

appropriated and put to beneficial use so that they are not now subject to appropriation as set forth in that certain application made by Second Parties in the office of the State Engineer of the State of Utah designated and filed as Application No. 11495; that Second Parties, who are the applicants in said application will, in consideration of the execution of this agreement, forthwith and do by these presents dismiss and withdraw said application and every part thereof so that the same becomes and is of no force or effect and is null.

8. That the parties hereto further agree and hereby forever define and fix as follows their respective rights and relative rights in and to the waters of a certain spring known as the Judd Kimball Spring, which spring rises on the land of said Joseph N. Cook and the waters thereof thence flow in a channel Southeasterly across the lands of Joseph N. Cook, thence on to and across the land of said Clarence Cook becoming, after crossing said Clarence Cook's land, the dividing line between the lands of Clarence Cook and the estate of David S. Cook Sr. and the lands of Clarence Cook and Joseph N. Cook, thence again on to the land of Joseph N. Cook where the waters of said spring are thereupon diverted to the Meadowville Canal. From the commencement of the use each year of the waters of said spring on time allotment and up to July 1st, parties of the First Part are entitled to and are the owners of 228 hours out of each 336 hours distribution of said waters and parties of the Second Part are entitled to and are the owners of 108 hours out of each 336 hours distribution of said waters; after July 1st parties of the First Part are entitled to and are the owners of 6 days of 24 hours each out of each 14 days distribution of said waters of said Judd Kimball Spring and parties of the Second Part are entitled to and are the owners of 8 days of 24 hours each out of each 14 days distribution of said waters.

together with the channel accretions between the points aforesaid

9. That the parties hereto further agree and hereby forever define and fix as follows their respective rights and relative rights in and to the waters of Meadowville Canal, which canal crosses the land of Joseph N. Cook, running in a meandering way almost South on to and across the land of said Ole Mattson, thence

the accretion being to the creek of the Judd Kimball Spring

on to and across the land of said J. R. Weston and as it leaves his land is diverted to town lots. Commencing each year at the time when the waters of the said Judd Kimball Spring are placed on time allotment and until July 1st, parties of the First Part are the owners of and entitled to 80 hours out of each 336 hours distribution of the waters of said Meadowville Canal and after July 1st parties of the Second Part are the owners of and entitled to all the waters of said Meadowville Canal.

10. That said Judd Kimball Spring and said Meadowville Canal may be placed on time allotment when their combined waters can be carried in said Meadowville Canal at its present size and capacity ^{after}

11. That this contract shall be binding upon and inure to ^{holding} the benefits of the heirs, successors, executors, administrators, and ^{made} grantees of the parties hereto. ^{claim}

IN WITNESS WHEREOF this agreement has been executed in three counterpart originals, one of which shall be filed in the office of the State Engineer of the State of Utah, and one of which shall be retained by First Parties, and one of which shall be retained by Second Parties.

Dated this 25 day of August, 1934.

Clarence Cook

J. W. Cook

Ethel M. Cook

Julia A. Cook

Clarence Cook

J. W. Cook

Lydia L. Gibbons
Executors of Estate of David S.
Cook, Sr., deceased.

FIRST PARTIES

SECOND PARTIES

W. Mattson
Harriet L. Mattson
R. B. Heston
Grace E. Weston
Ellsworth Johnson
Cora F. Johnson
Harold Johnson
Sola H. Johnson

State of Utah
County of Salt Lake }
I, Frederick B. Johnson,
Subscribed & sworn to before me this 25th day
of August, 1934.